IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

CRIMINAL APPEAL NO. 425 OF 89.

Single Bench (Criminal)

Appellants.

1. Lalmani Singh son of late Ramlakhan Singh aged about 58 years, occupation of Assistant Engineer (Irrigation Department) resident of 614, Bimlalaya, Sunder Nagar, Raipur.

2. P.Anand Reddy, son of P.P.Reddy, aged 35 years, Sub-Engineer (Irrigation Department) resident of 9/4, Irrigation Colony, Geedam Bastar.

3. Ramesh chand son of Radhacharan Das aged 36 years, Time keeper Irrigation Department resident of Baremkela District Raigarh.

-Versus-

Respondent. The State of Madhya Pradesh through the Police Station Sariya District Raigarh.

CRIMINAL APPEAL UNDER SECTION 374 (2) (a) OF THE CODE OF CRIMINAL PROCEDURE

A.F.R

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.425/1989

Laimani Singh & two others

Vs.

State of Madhya Pradesh (now State of Chhattisgarh)

Post for Orders : 24 .07.2006

Sd/-
Dilip Raosaheb
Deshmukh
Judge

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Before: Hon'ble Shri Justice Dilip Raosaheb Deshmukh

Criminal Appeal No.425/1989

Lalmani Singh & two others

Vs.

State of Madhya Pradesh (now State of Chhattisgarh)

Shri Kishore Bhaduri, learned Counsel for the appellant No.1.
Shri R.K.C.Tiwari, learned Senior Counsel with Shri Avinash K. Mishra, for the appellants No.2 & 3.
Shri M.P.S. Bhatia, Panel Lawyer for the State.

J U D G M E N T

(Delivered on this 24th day of July 2006)

This appeal is directed against the judgment dated 20th April 1989 delivered by Shri R. S. Rusia in Sessions Case No. 69/86 whereby the appellants were convicted under Section 6 of the M.P. Vinirdisht Bhrasht Aacharan Nivaran Adhiniyam 1982 (hereinafter referred to as 'the Adhiniyam') and under Section 467 I.P.C. and sentenced to rigorous imprisonment for one year for each offence. Sentences were ordered to run concurrently.

2. It is not disputed that in the year 1983 in District Raigarh, Irrigation Sub-Division, Baramkela, construction of Kinkamani canal was in progress under the relief work. At the relevant time, appellant Lalmani Singh was the Sub-Divisional Officer, appellant P.A.Reddi was the Sub-Engineer and appellant Ramesh Chandra Vishnov was the Timekeeper in the above mentioned relief work. It is also not

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disputed that as per muster roll Ex.P.15, payments for the work done were made to the Headman of the gang undertaking the work.

3. Briefly stated the prosecution story is that there was a complaint regarding less payments made to the labourers from 1.1.1983 to 6.1.1983 in the aforesaid relief work. Shri Prabhat Parasar, Additional Collector, Raigarh P.W.18 enquired into the complaint and found that less wages were paid to the labourers and submitted enquiry report Ex.P.95 mentioning that between the period 1.1.1983 to 6.1.83 labourers Balram (P.W.4), Motilal (P.W.5), Bashtabh and Lambodar (P.W.8) had received less payments. It was also mentioned that in the muster roll, the name of Ramadhar a child aged 6 years, who was the son of Satna (P.W.6), was falsely mentioned although he had not worked. A report was sent by the Collector to the Police Station Saria, District Raigarh vide Ex.P.96. On the basis of this report, an offence under Section 6(A) & (8) of the Adhiniyam was registered and investigation was conducted. Muster Roll Ex.P.15 and relevant papers were seized. On examination by the Additional State Examiner of Questioned Documents, it was opined vide Ex.P.51 that the muster roll Ex.P.15 had been prepared by the appellants. Sanction to prosecute the appellants under Section 37 of the Adhiniyam was sought from the State Government vide Ex.P.5. After completion of investigation, the appellants were prosecuted.

4. The appellants abjured the guilt, pleaded innocence and led no evidence in defence. The prosecution examined as many as 20 witnesses. Relying upon the evidence led by the prosecution, the learned trial Judge held that it was not established by the prosecution that the appellants had paid less wages, as per muster roll

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Ex.P.15 to the labourers. However, the learned trial Judge held that it was established that Ramadhar P.W.7, a child, had never worked in the relief work and yet his name found mention in the muster roll which clearly proved that the muster roll Ex.P.15 was a forged document. It also held that requisite sanction under Section 37 of the Adhiniyam as also under Section 197 Cr.P.C. had been obtained by the prosecution. On these premises, the learned trial Court convicted and sentenced the appellants, as shown in paragraph - 1.

5. Shri P.K.C.Tiwari, learned Senior Counsel and Shri Kishore Bhaduri, learned counsel for the appellants argued that the conviction of the appellants was bad in law since there was a clear violation of Section 39 of the Adhiniyam inasmuch as the requisite permission from an authority not below the rank of the Commissioner of a Division for investigating into the offence alleged was not sought. It was also urged that the sanction to prosecute the appellants under Section 37 of the Adhiniyam was neither duly authenticated nor sealed and, therefore, required formal proof. No evidence was led by the prosecution to show that the sanction Ex.P.5 had been signed by the competent authority. On these premises, it was urged that the appellants were entitled to be acquitted. It was also urged that the fact that the payments under the relief work were task based and were made to the Headman of the Gangman working in the relief work was admitted by B.P.Kashyap P.W.3 and was also borne out from the muster roll Ex.P.15. It, therefore, could not be ruled out that the name of Ramadhar, son of Satna was recorded as per names given by the Headman of the Gang. It was further urged that the prosecution had suppressed the very genesis of the entire investigation by not filing the complaint, if any, relating to less payment to labourers in

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the relief work which was suggestive of the fact that the appellants were falsely implicated. On the other hand, Shri M.P.S. Bhatia while arguing in support of the impugned judgment contended that the fact that the signatures of the officer signing the sanction order Ex.P.5 had not been formally proved was merely a technical defect which under Section 38 of the Adhiniyam did not vitiate the trial. Regarding the violation of Section 39 of the Adhiniyam, it was submitted that instead of the Commissioner, the Collector had lodged the first information report with the police.

6. Having heard the rival contentions, I have perused the record. The contention of the learned counsel for the appellants that the very genesis of the initiation of enquiry and investigation i.e. the complaint by the labourers was suppressed by the prosecution has merit. No such complaint was filed although Shri P.N. Parasar admitted in paragraph 1 that he had received the complaint through the Commissioner, Bilaspur Division. Non-filing of such a material document which formed the very genesis for enquiry and investigation justifies an adverse inference being drawn against the prosecution.

7. So far as the charge of payment of less wages to the labourers in the relief work during aforesaid period is concerned, the learned trial Judge has rightly held in paragraph 6 that the same was not established by the prosecution. The documents Ex.P.3 and Ex.P.10 filed by the prosecution clearly show that the payments were task based and were not to be paid on fixed rate. In this regard, no evidence was led by the prosecution to show that there were any irregularities relating to payment of wages on task basis. The finding

of the learned trial Judge that the prosecution has failed to establish that less payments were made to the labourers thus holds ground.

8. So far as mentioning the name of Ramadhar, son of Satna, in the muster roll Ex.P.15 is concerned, Ramadhar P.W.7 apparently a child stated that he never worked in the relief work and did not know the appellants. Satna P.W.6, his father, stated he had worked in the relief work and had received wages. Muster roll Ex.P.15 shows that payment was made to the Headman of the Gang i.e. Sitaram. However, this material witness was neither examined nor cited by the prosecution. Sitaram, the Headman would alone be able to tell as to in what manner the names of the labourers came to be recorded in the muster roll. The possibility that a bona fide mistake and an unintentional error had occurred due to misrepresentation of names by the labourers could therefore not be ruled out. More so because it is not a case where such errors have occurred at a large scale. It is the solitary instance that wages are shown to have been paid to Ramadhar, son of Satna. Age of the person i.e. Ramadhar, son of Satna to whom wages were disbursed is also not shown in the muster roll. Order Ex.P.5 also does not show that sanction for prosecution for non-payment of wages to any labourer, much less Ramadhar, had been accorded.

9. It is thus pertinent to note that the sanction order Ex.P.5 does not reveal a case of non-payment of wages. It clearly shows a case of less payment of wages which charge the learned trial Judge has rightly held to be not established by the prosecution. In view of the above lacunae in the sanction for prosecution vide Ex.P.5, the charge

relating to non-payment of wages to Ramadhar, son of Satna (P.W.6) can also not to be held to be proved. Coming to the arguments relating to the absence of formal proof of sanction for prosecution of the appellants for offence under the Adhiniyam, it would be useful to quote Section 37 and 38 of the Adhiniyam which read as under:

> "**37. Proof of sanction.**- The sanction for prosecution of a government servant for an offence under this Act, issued under Section 197 of the Code of Criminal Procedure, 1973 (No.2 of 1974) and purporting to be duly authenticated and sealed, shall be admissible in evidence without formal proof:
>
> Provided that, where the facts constituting the offence do not appear on the face of the sanction, the Court may call the officer authenticating the sanction to give evidence before it.
>
> **38. Curability to technical defects in the form of sanction.**- Any technical defect in the formal sanction granted under section 197 of the Code of Criminal Procedure, 1973 (No.2 of 1974) for the prosecution of a person employed in connection with the affairs of the State shall not vitiate the trial, unless it is proved that it caused substantial prejudice to the accused."

10. On perusal of Ex.P.5 dated 1.10.1985 it appears that it was neither duly authenticated nor sealed. Therefore, under Section 37 of the Adhiniyam, the document purporting to be a sanction for prosecution of a Government servant for an offence under the Adhiniyam was not admissible in evidence without formal proof. A formal proof of sanction means that it must be proved by the prosecution that the officer granting the sanction had the authority to sign the sanction order and that the sanction order was actually signed by such officer. No such evidence was led by the prosecution. Investigating Officer M.S.Sandhu, S.H.O. P.S. Saria P.W.13 did not

state as to who had signed the sanction order and in what capacity. He merely stated that he obtained sanction order from Bhopal vide Ex.P.5. Thus, no formal proof, as required under law, to prove a sanction for prosecution was adduced by the prosecution. Either the prosecution ought to have called the officer signing the sanction order Ex.P.5 in evidence or should have at least called some officer working in the Department who was conversant with the signatures of the Officer who had signed the sanction order. Unless there is evidence to show the authority of the Officer to sign the sanction order and also to show that such officer did actually sign the sanction order, it cannot be said that the prosecution had adduced formal proof of the sanction for prosecution of the appellants. I am of the considered opinion that it is not a mere technical defect under Section 38 of the Adhiniyam which shall not vitiate the trial.

11. The sanction order also does not show the very basis on which the appellants were sought to be prosecuted i.e. for making payment of wages to a fictitious person i.e. Ramadhar, son of Satna P.W.6 and does not show in any manner that payments were not made to the labourers on task basis. It also does not reveal the manner in which it was found that the payments made to the labourers at the rate of Rs.6.50 were not task based. The sanction order merely mentions that less payments were made to 17 labourers at the rate of Rs.6.50 instead of Rs.7.00 which charge the learned trial Judge has found to be not established from the evidence. Thus, if the sanction order did not reveal the very basis on which the prosecution led evidence against the appellants to prove the charges, the trial Court ought to have called the Officer authenticating the sanction to give evidence before it, as required under the proviso to Section 37 of the

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Adhiniyam. This is a serious lacunae which has caused substantial prejudice to the accused and thereby vitiated the trial. It is thus clear that non-compliance of Sections 37 of the Adhiniyam clearly vitiates the prosecution of the appellants under Section 6 of the Adhiniyam and 467 of the I.P.C.

12. I would now proceed to deal with the arguments relating to violation of Section 39 of the Adhiniyam. It would be useful to quote of section 39 of the Adhiniyam as it stood in the year 1991:

> "39. *Cognizance of offences.* --- All offences under this Act shall be cognizable :
>
> Provided that the Police Officer shall not investigate an offence under this Act except on a direction of the prescribed authority not below the rank of the Commissioner of Division on a report submitted by him to such authority.
>
> Provided further that the State Government may, at any time for the purpose of satisfying itself as to the propriety of any order passed by the Commissioner of the Division as prescribed authority either on its own motion or on reference made by the prescribed authority, shall call for and examine the record of any case pending before or disposed by such authority and may pass such order in reference thereto as it thinks fit."

13. Thus, a Police Officer, before investigating the offence, is required to make a report and obtain direction from an authority which shall not be below the rank of the Commissioner of Division, to investigate an offence under the Adhiniyam. In the instant case, it is not in dispute that the investigation commenced on the report Ex.P.96 of the Collector. Direction from a prescribed authority not below the rank of the Commissioner of the Division was not sought and a report

of enquiry was also not submitted by the Police Officer to an Authority not below the rank of the Commissioner of Division before commencing investigation. In this case, the Collector, Raigarh clearly acted without jurisdiction in directing the S.H.O. Baramkela to investigate into the report Ex.P.95 of the Additional Collector P.K.Parasar. The S.H.O. P.S. Baramkela, after conducting a preliminary enquiry into the first information report sent by the Collector, ought to have sought a direction of the prescribed authority not below the rank of the Commissioner of a Division to investigate the offence under the Adhiniyam. Nothing of that sort was done in this case. If the Collector had informed the Police Officer vide Ex.P.96, it was incumbent on the S.H.O. P.S. Baramkela to have enquired into the report and to have submitted a report to an authority not below the rank of the Commissioner of a Division for permission to investigate into the offence under the Adhiniyam. The learned trial Judge, on perusal of the document Ex.P.5 purporting to be a sanction for prosecution, issued by the Madhya Pradesh Government held that the requisite sanction as required under Section 37 of the Adhiniyam and also under Section 197 Cr.P.C. had been obtained for prosecution of the appellants. The learned trial Judge completely ignored the mandatory provisions of Section 39 of the Adhiniyam, compliance of which was a prerequisite for conducting an investigation into an alleged offence under the Adhiniyam. In the instant case, the requirement of Section 39 of the Adhiniyam was not complied with, which vitiates the prosecution of the appellants.

14. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the conviction of the appellants under Section 6 of the Adhniyam and also under Section

467 of the I.P.C. and the sentence awarded thereunder is liable to be set aside.

15. In the result, the appeal is allowed. Conviction of the appellants under Section 6 of the Adhniyam and also under Section 467 of the I.P.C. and the sentence awarded thereunder is set aside. The appellants are acquitted.

Sd/-
Dilip Raosaheb
Deshmukh
Judge
24.07.2006